SUPREME COURT OF THE UNITED STATES.

No. 415.

WHITE'S BANK OF BUFFALO, APPELLANT,

vs.

THE PROCEEDS OF THE SCHOONER ROBERT EMMETT, ROBERT SMITH, CLAIMANT.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF NEW YORK.

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1 Circuit court of the United States of America, northern district of New York.

WHITE'S BANK OF BUFFALO, petitioner and appellee,
v.
THE PROCEEDS OF THE SCHOONER ROBERT EMMETT, Robert Smith, claimant and appellant.

To the honorable the Supreme Court of the United States:

The appeal of White's Bank of Buffalo, the above-named petitioner and appellee, respectfully showeth, that on the 20th day of October, A. D. 1865, the above-named White's Bank of Buffalo filed its petition in the district court of the United States for the northern district of New York, against the proceeds of the schooner Robert Emmett, in a cause civil and maritime, for the recovery of the entire proceeds remaining in the registry of the said court, which sum, with interest to July first, 1866, accrued thereon, amounted to $4,547 58.

That the said Robert Smith, the above claimant and appellant, thereupon filed his answer to said petition, and such proceedings were had in said cause that on the 18th of April, 1866, a final decree was made and pronounced therein by the said district court, wherein it
2 was in substance adjudged that the said petition ought to be paid the amount of his claim and the costs of the suit out of the proceeds of the sale of said schooner remaining in the registry of said court.

And that after such final decree the above-named claimant duly appealed therefrom to the circuit court of the United States for the northern district of New York, and the said cause was removed thereby into the said circuit court and there tried anew, and such proceedings were had in the said circuit court that afterwards, on the 19th of November, 1866, the said circuit court made a final decree in the said cause, whereby it was decreed that the said decree of the district court be in all things reversed and held for naught, and the petition of said White's Bank of Buffalo be, and the same was thereby, dismissed with costs to the appellee, and that the appellant have execution, which said decree of the said circuit court is, as this appellee is advised, erroneous and ought to be reversed.

Wherefore this appellee appeals from the whole of said decree of said circuit court to the Supreme Court of the United States,
3 and respectfully prays that the said decree of the said circuit court and the petition, answer, pleadings, depositions, evidence, and proceedings in the said cause may be sent to the Supreme Court of the United States without delay, and that the said Supreme Court will proceed to hear the said cause anew, and that the said decree of the said circuit court and every part thereof may be reversed, and a

decree made affirming the decree of the district court with costs, or such other decree as to the said Supreme Court shall seem just.

Dated Dec. 6, 1866.

White's Bank of Buffalo, by G. C. WHITE, *Pres't.*
L. K. HADDOCK,
Proctor for Petitioner and Appellant.
JOHN HUBBELL,
Advocate.

Appeal allowed Dec. 6, 1866.

N. K. HALL.
Judge of the Circuit Court of the U. S. for the N. Dist. of N. Y.

Filed Dec. 7, 1866.

4 By the honorable Nathan K. Hall, one of the judges of the circuit court of the United States for the northern district of New York.

To Robert Smith:

Whereas White's Bank of Buffalo, petitioner for the proceeds of the schooner Robert Emmett, now remaining on the registry of said court, has lately appealed to the Supreme Court of the United States from a decree lately rendered in the circuit court of the United States for the northern district of New York, dismissing the petition of said White's of Buffalo with costs to you, the said Robert Smith, and has filed the security required by law, you are therefore hereby cited to appear before to said Supreme Court, at the city of Washington, on the first Monday of December next, to do and receive what may appertain to justice to be done in the premises.

Given under my hand at the city of Buffalo, in the northern district of New York, on the 6th day of December, 1866.

N. K. HALL,
Judge of the Circuit Court of the U. S. for the Northern District of New York.

5 STATE OF OHIO, *Seneca County, ss:*

G. J. Keen being duly sworn, says: That he served the within citation on the appellee, Robert Smith, on the tenth day of December, A. D. 1866, by delivering to and leaving with him personally at the town of Green Springs, in said county of Seneca, a copy of said citation, and at the same time showing him the within original citation. Deponent further saith that at the same time and place he delivered to and left with said Robert Smith an appeal, of which the annexed is a copy.

G. J. KEEN.

Sworn to and subscribed before me, this 11th day of December, 1866.

JAMES PILLARS,
United States Commissioner, Northern District of Ohio.

Filed Dec. 10, 1866.

6 Supreme Court of the United States, in admiralty.

WHITE'S BANK OF BUFFALO, appellant,
v.
THE PROCEEDS OF THE SCHOONER ROBERT Emmett, Robert Smith, appellee.

I, Augustus A. Boyce, clerk of the circuit court of the United States in and for the northern district of New York, in the second circuit, having inspected the files and records of my said office, kept by me at the city of Utica, in said district, do hereby certify and return that the following is a true transcript of the petition, answer, pleadings, depositions, evidence, proceedings, and decree in said cause remaining on file and of record herein.

In testimony whereof I have hereunto subscribed my name and have hereto affixed the seal of the said court, at my office, in Utica, in the northern district of New York, on this 10th day of December, anno Domini one thousand eight hundred and sixty-six.

[L. S.] AUG. A. BOYCE, *Clerk.*

[5-c. in. rev. stamp, cancelled.]

7 Circuit court of the United States for the northern district of New York, in admiralty.

Appeal from the district court of the United States for the said district.

WHITE'S BANK OF BUFFALO
vs.
THE PROCEEDS OF THE SALE OF THE SCHOONER Robert Emmett.

1865.
Oct. 20. Libel filed in district court.
Nov. 17. Answer filed in district court.
1866.
April 18. Final decree entered.

8 United States of America, northern district of New York, in admiralty.

To the honorable Nathan K. Hall, judge of the United States district court in and for the northern district of New York.

The petition of White's Bank of Buffalo respectfully shows:

First. That, at the several times hereinafter mentioned, White's Bank of Buffalo was, and still is, a banking corporation, organized and doing business at the city of Buffalo, county of Erie, and State of New York, under and by virtue of an act of the legislature of the State of New York, entitled "An act to authorize the business of banking," passed April 18, 1838, and of the amendments thereof; and that George C. White, at the several times hereinafter mentioned, was, and still is, president of such bank.

Second. That on the third of April, 1863, one Seth Clark, of Buffalo aforesaid, being the sole owner of the schooner Robert Emmett, sold and delivered the same to Gabriel Hoyt, of the city of Buffalo aforesaid, the bill of sale of which is recorded in the collector's office of the port of Buffalo, in liber six of bills of sale, at page one hundred forty-one.

Third. That on the 22d of May, 1863, the said Gabriel Hoyt, then being a resident of the city of Buffalo aforesaid, executed a
9 mortgage upon said schooner to said White's Bank of Buffalo, in the sum of four thousand dollars, conditioned to secure any indebtedness, then or thereafter to be made, owing to said White's Bank by the said Gabriel Hoyt, which said mortgage was recorded in the collector's office of the port of Buffalo, in liber six of mortgages, at page one hundred and forty-three, June 12, 1863, that being the office in which said vessel was enrolled, and a copy of said mortgage was duly filed in the office of the clerk of Erie county aforesaid, on the fifth day of June, 1863.

Fourth. That on the fifteenth day of July, 1865, there remained due of the money secured to be paid in and by said mortgage, the sum of four thousand dollars, and the sheriff of the county of Erie on that day took possession of said vessel upon a claim of said White's Bank for the delivery thereof; that afterwards said vessel was delivered by the sheriff of said county to said White's Bank, who caused the said vessel to be duly advertised, pursuant to the requirements of said mortgage, and said vessel was afterwards and on the 28th of August, 1865, sold to said White's Bank of Buffalo, at public auction, on board of said vessel, and a bill of sale thereof executed to said White's Bank, which was recorded in the office of the custom-house, in the city of Buffalo, in liber five of bills of sale, at page
10 ninety-six, August 31st, 1865, and thereupon said White's Bank of Buffalo became and was the sole, true, and bona fide holder of said schooner, and that no other person was the owner thereof.

Fifth. That on the 29th day of August, 1865, the said schooner then lying in the port of Buffalo Creek, and in the possession of said White's Bank was seized by the marshal of the northern district of New York, by virtue of a warrant of arrest in rem, upon the filing of a bill in the district court of the United States of America for the northern district of New York, on the 29th day of August, 1865, in behalf of John T. Garland and Joel Laschane, in a cause of contract, civil and maritime; that afterwards, in pursuance of a decree of said court, said vessel was sold, and the proceeds of such sale have been brought into the registry of the court; and that there remains a surplus of such proceeds, amounting to the sum of $4,682 91, after satisfying a decree founded upon a libel, filed on the 2d of September, 1865, in behalf of George L. Newman and Erastus Scoville against said schooner in a cause of contract, civil and maritime.

Sixth. That on the 28th day of March, A. D. 1865, or thereabouts, the said Gabriel Hoyt, for value received, sold and delivered
11 to one Henry Zahn, of Tiffin, Ohio, an undivided half part of

said schooner, her masts, bowsprit, sails, boats, anchors, cables, tackle, apparel, and furniture, and all other necessaries thereunto belonging, the bill of sale of which is recorded in the collector's office of the district of Buffalo Creek, port of Buffalo, on the 31st of March, 1865, in liber seven of bills of sales, at page 47.

Seventh. That on the 28th of March, 1865, the said Gabriel Hoyt and Henry Zahn being sole owners of said schooner Robert Emmett, mortgaged the same to William G. Grant and William G. Grant, jr., of the city of New York, conditioned to secure the payment of twelve thousand dollars, with interest from the date thereof, then due and owing from the said Hoyt and Zahn to the said W. G. Grant and W. G. Grant, jr., and payable on the first day of October, 1865; that said mortgage was duly signed, sealed, acknowledged, and delivered, and recorded, in the collector's office of the port of Buffalo, April 3, 1865, in liber seven of book of sales, at page 48, and a copy of said mortgage was, on the sixth of April, 1865, duly filed in the register's office of the city and county of New York, where the said Gabriel Hoyt then resided; and also on the 8th day of April, 1865, a copy
12 thereof was duly filed in Erie county clerk's office, said schooner so mortgaged being, at the execution thereof, in the city of Buffalo, in said county of Erie.

Eighth. That on the tenth of October, 1865, the said W. G. Grant and W. G. Grant, jr., for a good and valued consideration, sold, assigned, and delivered to the said White's Bank of Buffalo the said mortgage, so executed as aforesaid by the said Hoyt & Zahn, and the money secured in and thereby, and duly authorized said bank to collect and enforce payment thereof against said vessel, or the remnants of the proceeds of the sale thereof, now in the registry of the district court of the northern district of New York, and thereupon said White's Bank became and was the sole, true, and bona fide holder of said mortgage, and the money so secured to be paid thereby; wherefore this petitioner prays that this honorable court will pronounce for this aforesaid claim and demand, and will direct the proceeds so remaining in the registry of the court as aforesaid, after satisfying the demand of the libellants, John T. Garland and Joel Laschane, to be paid over to this petitioner, and for such other and further relief and redress as to right and justice may appertain, and as this court is competent to give in the premises.

L. K. HADDOCK, *Proctor.*
GEO. C. WHITE.

13 On the 20th day of October, 1865, appeared personally, Geo. C. White, president of White's Bank of Buffalo, and was sworn to the truth of the foregoing petitions, before me.

GEO. GORHAM,
United States Commissioner.

14 *The proceeds of the sch'r Robert Emmett.*

UNITED STATES OF AMERICA, *Northern District of New York:*

Whereas a petition hath been filed in the district court of the United States of America for the northern district of New York, on the 20th day of October, in the year of our Lord one thousand eight hundred and sixty-five, by Lorenzo K. Haddock, of Buffalo, in the State of New York, against the proceeds of the sale of the schooner Robert Emmett, now in the registry of the said court, stating and alleging that at the time said schooner was sold upon the writ of venditioni exponas, issued out of the said United States district court, in the suit of Newman & Scoville against the said schooner, the said White's Bank of Buffalo, being a duly authorized banking corporation, was the sole and true owner of said schooner, and that since said sale the petitioner has become the owner and holder of a certain mortgage executed by the then owners of said schooner on the 28th day of March, 1865, to William G. Grant and William G. Grant, jr., of the city of New York, for the payment of $12,000, and now holds said mortgage, and that the same is still due and unpaid, and praying the usual process and monition of the said court, that all persons
15 having or pretending to have any right, title, or interest therein may be cited to answer the premises, and all due proceedings being had that the demand of the petitioner may be decreed to be paid out of the said proceeds.

Therefore, in pursuance of the said monition under the seal of the said court, to me directed and delivered, I do hereby give notice generally, unto all persons having or pretending to have any right, title, or interest in the said proceeds, to appear before the said court at the city of Buffalo, on the seventh day of November, if it shall be a court day, otherwise on the next court day thereafter, and further to do and receive in this behalf as to justice shall appertain.

Dated at Buffalo the 20th day of October, in the year of our Lord one thousand eight hundred and sixty-five.

L. K. HADDOCK, *Proctor.*
EDWARD DODD, *U. S. Marshal.*
A. G. STEPHENS, *Deputy.*

16 UNITED STATES OF AMERICA,
Northern District of New York, ss:

N. W. Thayer, of the city of Buffalo, being duly sworn, says that he is foreman in the office of Matthews & Warren, publishers of the newspaper called the "Buffalo Commercial Advertiser;" and that a notice, of which the annexed printed notice, cut from said newspaper, is a copy, was inserted and regularly published therein for two weeks in succession; three times in the first, and twice in the second week, commencing on the 21st day of October, 1865.

N. W. THAYER.

17 *In admiralty.*

UNITED STATES OF AMERICA, *Northern District of New York:*

And now comes Robert Smith, of Green Springs, in the county of Cayuga, in the State of Ohio, and for answer to the petition of White's Bank of Buffalo against the proceeds of the schooner Robert Emmett, her tackle, &c., now remaining in the registry of this court, does allege and propound as follows:

First. That he has not knowledge or information sufficient to form a belief whether a copy of the mortgage to said grant, in said petition mentioned was filed in the office of the register of the city of New York, as alleged in said petition, or whether said Hoyt then resided in said city of New York, and therefore he denies the allegations in that behalf contained in said petition; and he denies, upon information and belief, that said vessel, at the time of the execution of said mortgage was at the city of Buffalo as alleged in said petition. On the contrary he alleges, upon information and belief, that she was then at Sandusky, in the State of Ohio, and he also alleges that at the time of the execution of said mortgage said Hoyt resided at some place within the State of New York.

18 Second. That he has not knowledge or information sufficient to form a belief whether the said W. G. Grant and W. G. Grant, jr., did, for a good and valuable consideration, sell, assign, and deliver to said petitioner the mortgage executed to them by said Hoyt and Zahn, and the moneys secured in and thereby, or did authorize said bank to collect and enforce payment thereof against said vessel, or the proceeds of the sale thereof; or whether said White's Bank did thereupon become the sole, true, and bona fide holder of said mortgage, and the money secured to be paid thereby, and he therefore denies the allegations in that behalf in said petition contained.

Third. That neither the said mortgage to said petitioner, nor the said mortgage to said Grant and Grant, were accompanied by a delivery of said mortgaged property or any part thereof; nor were they or either of them followed by an actual or continued change of possession of said mortgaged property, or any part thereof, wherefore said respondent claims that said mortgages were fraudulent and void as against said respondent.

Fourth. That on or about the day of 1865, said Gabriel Hoyt sold and conveyed all his interest in said schooner Robert Emmett, her boats, tackle, apparel, and furniture to said Henry Zahn.

19 Fifth. That thereafter and on the fifth day of June, 1865, said Zahn, being indebted to said respondent upon the demands hereinafter mentioned, executed and delivered to said respondent a mortgage upon said schooner, her tackle, apparel, and furniture, in and by which, for a valuable consideration, then parted with by said respondent upon the strength of and in consideration of said mortgage, said Zahn conveyed said schooner, her tackle, apparel, and furniture to said respondent. That said conveyance was, however, upon

the express condition that if the said Zahn should, on or before the first day of November, 1865, pay to said Robert Smith the following claims, with the accruing interest thereon, to wit: Two drafts or bills, drawn by said Zahn or G. Hoyt at Buffalo, N. Y., for $1,500 each, dated Dec. 19, 1864, one thereof payable 60 days from its date, and the other thereof payable three months from its date, and which were then past due and had been protested for non-payment, and also three promissory notes dated January 27th, 1865, one being for $1,000, payable at sight, one for $1,000, payable thirty days after the date thereof, and the other for $985 89, payable forty-five days after the date thereof, together with all damages, costs of protest, and collections, then the said conveyance should be void, else to remain in full force.

20 Sixth. That said demands were, at the time of the giving of the said mortgage, and still are, held and owned by said respondent, and in good faith owing to him and wholly unpaid.

Seventh. That at the time of the making of said mortgage it was agreed by and between said respondent and said Zahn, in consideration of the giving said mortgage, that the time of payments of the said demands should be extended until the first day of November, 1865.

That said Zahn, at the time of the giving of said mortgage, held and owned a large amount of property, and said demands were entirely collectable.

That said mortgage was taken by said respondent, and said agreement for the extension of said time, made by him in good faith, believing the mortgaged property to be wholly unencumbered, and without notice of either of the mortgages mentioned in the petition herein.

That, relying upon the security of said mortgage, and in pursuance of his said agreement for the extension of the time of payment of said demands, said respondent took no measures for the collection thereof.

That he had no notice of the existence of the mortgages mentioned in said petition, or either of them, until a considerable time

21 after the giving of said mortgage to him by said Zahn, and that before he received notice thereof said Zahn became largely insolvent, and said demands became uncollectable, unless they can be collected from the proceeds of said vessel remaining in the registry of this court.

Eighth. That at the time of the execution and delivery of said mortgage to him as aforesaid, and at the time of the giving of the mortgage to said Grant and Grant in said petition mentioned, said Henry Zahn resided in the township of Tiffin, in the county of Seneca, and State of Ohio.

That on the 17th day of June, 1865, said mortgage to said repondent was recorded in Liber C., at pages 27 and 28, in the office of the collector of the port of Sandusky, in which office said vessel was enrolled at the time of the execution and delivery of said mortgage.

That during all the time herein mentioned it was the law of the

said State of Ohio that every mortgage, or conveyance intended to operate as a mortgage, which should not be accompanied by an immediate delivery and be followed by an actual and continued change of possession of the things mortgaged, should be absolutely void, as against the creditors of the morgigor and as against subsequent purchasers and mortgagers in good faith, unless
22 the mortgage, or a true copy thereof, should be forthwith deposited in the office of the clerk of the township in said State, where the mortgagor therein, if a resident of said State, should reside at the time of the execution thereof; and if not a resident of the State, then, with the clerk of the township where the property so mortgaged should be at the time of the execution of such instrument, except, however, that in all townships in which the office of the recorder of the county was kept, such instrument should be deposited with him instead of the clerk of said township.

That neither said mortgage to said Grant and Grant, nor a true copy thereof, was deposited either in the office of the clerk of said township of Tiffin or the recorder of the said county of Seneca.

Wherefore said respondent prays that this honorable court will pronounce against the claim and demand of said petitioner herein, and that his petition may be dismissed with costs to said respondent.

BOWEN & ROGERS,
Proctors for Respondent.

23 STATE OF NEW YORK, *Erie county, ss:*

Sherman S. Rogers, being duly sworn, says that he is one of the proctors for the respondents herein, and that the foreging answer therein is true of his own knowledge, except as to the matters therein stated on his information and belief, and as to those matters he believes it to be true.

SHERMAN S. ROGERS.

Sworn before me this 17th day of November, 1865.
A. P. NICHOLS, *U. S. Comm'r.*

24 *Final decree pro confesso.*

At a special session of the district court of the United States of America for the northern district of New York, held at the city of Buffalo, in the said district, on the 8th day of November, in the year of our Lord one thousand eight hundred and sixty-five.

Present: The Honorable Nathan K. Hall, district judge.

WHITE'S BANK OF BUFFALO
vs.
THE PROCEEDS OF THE SCHOONER "ROBERT EMMETT."

The mesne process, returnable this day in this cause, having been returned duly executed, and upon proclamation duly made for all persons having or pretending to have any right, title, or interest in

the said proceeds of the schooner "Robert Emmett," her tackle, apparel, and furniture, to appear and make due answer to the petition filed in this cause, no person having appeared to answer the same except Robert Smith, James B. Radcliff, and Henry Fall, the court, on motion of Mr. L. K. Haddock, advocate for the petitioner, doth pronounce all persons whatsoever, except said Robert Smith, James B. Radcliff, and Henry Fall to be in contumacy and default,
25 and doth order and adjudge that the petition filed in this cause be, and the same hereby is, taken pro confesso against *against* all persons whatsoever, except the above-named Robert Smith, James B. Radcliff, and Henry Fall.

26 UNITED STATES OF AMERICA,
Northern District of New York:

The President of the United States of America to the marshal of the United States, for the northern district of New York, and to his deputy whomsoever, greeting:

You are hereby jointly and severally strictly charged and commanded that you monish and cite all persons in general, having or pretending to have any right, title, or interest in the proceeds of the sale of the schooner Robert Emmett, now in the registry of the district court of the United States of America for the northern district of New York, to appear before the said court, at the city of Buffalo, in the said district, on the seventh day of November next to answer the petition of White's Bank of Buffalo in a cause contract, for payment of a loan; and further to do and receive in this behalf as to justice shall appertain.

Witness the Honorable Nathan K. Hall, judge of the aforesaid court at the city of Buffalo, this twentieth day of October, in the year of our Lord one thousand eight hundred and sixty-five.

GEO. GORHAM, *Clerk.*
LORENZO K. HADDOCK, *Proctor.*

[50-cent conveyance, cancelled.]

27 I certify that on the 21st day of Oct'r, 1865, I monished and cited all persons having or pretending to have any interest, right, or title to or in the proceeds of the schooner Robert Emmett, now in the registry of this court, to appear as within I am commanded.

EDWARD DODD,
U. S. Marshal.
By A. G. STEVENS,
His Deputy.

28 N. dist. N. Y.

WHITE'S B'K OF BUFFALO, petitioner,
vs.
PROCEEDS OF SCHOONER ROBERT EMMETT.

BUFFALO, *Ap'l* 16, '66.

Mr. Haddock for petitioner reads the petition which was filed Oct. 20, '65.

All parties defaulted except Robert Smith.

Robert Smith answer read.

Stipulation read.

It is admitted that no delivery of possession was made under either of the mortgages. Also, that at the time of the execution of the mortgage to Grants and of the one to Smith the vessel lay at the port of Sandusky, Ohio.

It is admitted that the Robert Emmett did not come into the State of N. York during the season of '65 until the 15 July of that year.

Gabriel Hoyt's deposition read by Mr. Haddock.

It is admitted that it is and for many years has been the custom in N. Y. for the lease of houses to commence and expire the 1st of May of each year.

29 Gabriel Hoyt to White's Bank:

Mortgage dated 22d May, '65. Rec'd Buffalo, June 12, 1863, 10½ a. m., G. Hoyt note to F. Gridley, cash for $2,000, dated Feb'y 1, '65, at 45 days after date.

Duly protested for non-payment. It is admitted that Gridley is is cash. White's B'k.

Note of G. Hoyt, March 11, '65 for $2,000—45 days payment to Gridley, cash., duly protested.

Only question to this mortgage is as to its refiling.

Gabriel Hoyt and Henry Zahn to W. A. and W. A. Grant, jun.: Dated March 28, '65. Received Buffalo, Ap'l 3, '65, mortgage. W. G. & W. G. Grant, jun. to White's Bank. Assignment of the above mortgage dated 10 Oct., '65. Ack'd 26 Nov., '65.

Mr. Haddock sworn.

I drew the assignment from Grants to White's Bank executed in the city of New York. I acted as agent and attorney for White's Bank; was authorized to act for it. The consideration was that the W. B'k was to bid off the Robt. Emmett on the sale on the foreclosure, and the Grants not to interfere. Don't know that
30 anything took place when the assignment was made. It was sent me and returned to them at N. Y. I saw young Grant before the assignment was made, in the office of Davis, att'y of the Grants. I met both of the Grants, can't tell how long before, perhaps two weeks; it was before the sale on the decree, which was 28th Aug't, '65, I think about the 1st of October, '65, that I saw the Grants. Have an impression that I had an interview with Grant,

senior, in Aug't in the presence of Davis, and then made a partial arrangement with Davis.

On the morning of the 28th August went to the sale of the Emmett with White and Davis. Then told White I thought the vessel worth about $8,000, and his debt only $4,000. That the boat was probably largely in debt along the lake, and probably it was necessary she should be sold in admiralty to protect a title.

That many of these claims could probably be defended against.

I agreed with Davis to bid off this vessel for the bank, and defend these suits in admiralty if any were brought; then have her libelled for seaman's wages, if advisable, and bid her off in that sale, and then dispose for the best interest of all—pay White's B'k debt, and the surplus to the Grants. I bid her off on the 28th Aug't under that arrangement. I do not know how much is due on the
31 Grant mortgage. This arrangement was made on the day of and before the sale on the foreclosure, when the vessel was sold on the foreclosure in Buffalo creek.

Ohio Stat. Edition of 1854, page 315, sec. 32 and on.

4 vol. Edmund's Ed. Revis. Stat. of N. Y., page , sec. 1.

Petitioner rests.

1. Mr. Rogers reads John K. Hord's affidavit.
2. Mr. Rogers reads John K. Hord's affidavit.
3. Robert Smith, claimant, deposition.
4. Henry Zahn deposition.
5. John T. Huss deposition.

Henry Zahn to Rob't Smith:

Mortgage dated 5 June, '65. Rec'd at Tiffin Nov. 25, '65. Ack'd same day. Rec'd in coll'r office, Sandusky, Ohio, 17 June, 1865.

Mr. Rogers argues for Smith.

Mr. Haddock for petitioner.

Mr. Rogers in reply.

32 United States district court, northern district of New York, in admiralty.

WHITE'S BANK OF BUFFALO *ag't* THE PROCEEDS OF THE SCHOONER ROBERT Emmet.

The following facts are hereby stipulated herein:

1st. Gabriel Hoyt was the sole owner of the schooner Robert Emmet, on the 22d day of May, 1863, and a resident of the city of Buffalo during the years 1863 and 1864.

2d. That G. Hoyt executed the mortgage to White's Bank upon the Emmet, to secure $4,000 due or to become due, which mortgage was dated May 22d, 1863, filed in Erie county clerk's office June 5th, 1863; recorded in the collector's office at Buffalo June 12th, 1863.

That said G. Hoyt then resided in the city of Buffalo, N. Y. That the Emmet was enrolled in the collector's office, at Buffalo, from April

7th, 1863, to April 8, 1865, when she was enrolled at Sandusky, Ohio.

That said mortgage was a good and valid mortgage, made in good faith and without intent to defraud the creditors of Hoyt, or subsequent purchasers, in good faith. That said mortgage was not re-
filed in Erie county clerk's office, (the respondent claims that
33 it was rendered thereby invalid or against him.) That there is now due and unpaid upon said mortgage from G. Hoyt to White's Bank of Buffalo the sum of four thousand dollars; two thousand dollars of which debt accrued Feb'y 6th, 1865, and matured March 28th, 1865, and the balance accrued March 10, 1865, and matured on the 27th day of April, 1865, and the same is now due with interest, except $1,500, which was realized by the sale of the Emmet by White's Bank, on the 28th day of August, 1865, under the foreclosure of the mortgage to it. That White's Bank took possession of said schooner on the 15th day of July, 1865, by virtue of the mortgage executed by Hoyt to White's Bank, and retained possession of her until August 28th, 1865, having in the meantime taken proceedings to foreclose its mortgage, when she was sold pursuant to the power in said mortgage.

3d. That G. Hoyt sold one-half of the Emmet to Henry Zahn, on or about the 31st of March, 1865. That the bill of sale thereof was antedated. That it was recorded March 31, 1865, in the collector's office at Buffalo.

4th. That on or about the 27th day of April, 1865, the said Hoyt sold his remaining one-half to Henry Zahn.

The bill of sale thereof is dated April 27th, 1865, and re-
34 corded in the collector's office at Sandusky, Ohio, May 6th, 1865.

That Henry Zahn, at the time he acquired the several interests in the Emmet from Hoyt, knew of the existence of the mortgage to White's Bank, and that there was $4,000 secured thereby and owing thereon.

6th. That on the 5th day of June, 1865, Henry Zahn mortgaged said Emmet to Robert Smith, to secure the payment of precedent debts, as follows:

One draft of Zahn on Hart, for $1,500, dated Dec. 19, 1864, payable sixty days from date; one draft of Zahn on Hoyt, for $1,500, dated Dec. 19, 1864, payable three months from date; one note of Zahn, for $1,000, dated Feb'y 17, 1865, payable at sight; one note of $1,000, dated Feb'y 27, 1865, payable thirty days from date; one note for $985 89, dated Feb'y 27, 1865, and payable forty-five days from date.

That said mortgage was dated June 5th, 1865; recorded at Sandusky, Ohio, June 19th, 1865; filed in the recorder's office of Seneca county, city of Tiffin, Nov. 25, 1865; that being the place required by law in which to file the same.

That Hoyt and Zahn executed a mortgage upon the Emmet to W. G. Grant & W. G. Grant, jr., to secure $12,000, and said mortgage is dated March 28th, 1865; filed April 3d, 1865, in collector's office

at Buffalo; filed April 6th in register's office of the city of New York, and filed April 8th, 1865, in Erie county clerk's office.

35 That said Henry Zahn resided in the township of Tiffin, in the State of Ohio, during the years 1864 and 1865.

7th. That said mortgage to Grant was not recorded or filed in Brooklyn, N. Y., or in Ohio.

8th. Nothing in the answer herein shall be deemed admitted for want of reply, except as herein specified.

9th. That the affidavit of J. K. Hard, taken Dec. 4, '65, and the affidavit of Rob't Smith, taken Dec. 8, '65, copies of which are hereto annexed, may be read on the trial or hearing of this cause as evidence, (with the same force as if the matters therein stated were testified to in open court,) without objection, except as to the materiality of the statements therein contained.

BOWEN & ROGERS,
Att'ys for Smith.

Dated Buffalo, December 18th, 1865.

L. K. HADDOCK,
Att'y for Petitioner.

36 District court of the United States, northern district of New York.

WHITE'S BANK OF BUFFALO
agt.
THE PROCEEDS OF THE SCHOONER ROBERT Emmett.

Deposition of Gabriel Hoyt, a witness produced, sworn, and examined on behalf of the petitioner in this proceeding, at the office of the undersigned in the city of Buffalo. Mr. L. K. Haddock, counsel for petitioner; Mr. S. S. Rogers, counsel for respondent:

Gabriel Hoyt, being duly sworn, testifies as follows:

Question. Where did you reside April 7th, 1863?

Answer. In the city of Buffalo.

Ques. When did you leave Buffalo?

Ans. About February 6, 1865.

Where did you go?

To New York city. I took my family with me.

Ques. Where did you reside at the time of the execution of this mortgage?

(The witness is here shown a mortgage, dated March 28, 1865, executed by witness and Henry Zahn to Wm. G. Grant and Wm. G. Grant, jr.)

Answer. My intention was to reside in the city of New York.

Question. Did you go to keeping house in the city of New York?

Answer. I did not at that time.

37 Ques. Did you try to get a residence there?

Ans. I did.

Ques. Did you succeed?
Ans. I did not.
Ques. Where did you finally find a house?
Ans. In Brooklyn.
Ques. When?
Ans. About the first of June.
Ques. Where did you board or visit at the time this mortgage was executed?
Ans. I was visiting either at my father's, in the city of New York, or with my wife's folks in Brooklyn.
Ques. Did you make it your home at your father's or with your wife's folks?
Ans. I made it my home at both places.
Ques. Where did you have your office or place of business?
Ans. At 280 Cherry street, in New York city.
Ques. Where did your father reside?
Ans. At 34 Jefferson st., in New York.
Ques. For what purpose was this mortgage to the Grants executed?
Ans. To secure an indebtedness to Grant.
Ques. Was the whole amount here secured then due?
Ans. It was.
Ques. Was it made in good faith without intent to defraud your creditors or subsequent purchasers in good faith?
Ans. It was made in good faith without intent to defraud my creditors or subsequent purchasers in good faith.
Ques. Was the debt secured by this mortgage to Grant due
38 from you and Zahn jointly?
Ans. Yes.
Ques. What amount of money was due upon the White's Bank mortgage at the time they took possession of the vessel?
Ans. I owed White's Bank $6,000 and interest.
Ques. How much is now due upon this mortgage to Grant?
Ans. I suppose the whole amount. I don't know.
Ques. Have you paid anything to the Grants to apply on this mortgage?
Ans. I have not.
Ques. Do you know of Zahn's having paid anything to apply on this mortgage?
Ans. I do not.

Cross-examined by Mr. Rogers:

Ques. Had Hoyt & Zahn had dealings with the Grants for some time when this mortgage was given?
Ans. Yes, sir.
Ques. How did you ascertain at the time this mortgage was given that as much as that sum was due the Grants?
Ans. From my own books, and from a memorandum account from him.
Ques. Did you have a settlement with them at that time?
Ans. I did not.

Ques. Did you give your notes or other obligations other than the mortgage itself for these moneys?

39 Ans. I did not.

Ques. What other securities did you, or either of you, give for the moneys you owed to the Messrs. Grant?

Ans. We gave them a bill of sale of part of the lumber we had on hand in Ohio and Indiana, consisting of black walnut, oak, white wood, and ash, I think, the approximate value of which was $17,000. We also gave them a mortgage on the brig Lucy A. Blossom for $12,000, I think. I valued the Blossom at that time from $8,000 to $10,000. I think we gave them no other securities.

Ques. How much do you think there is owing of that indebtedness to the Messrs. Grant?

Ans. I think there must be a balance due them of $8,000 or $10,000. This is simply a guess. Our entire indebtedness at the time of the bill of sale of the lumber, of which I have spoken, to the Grants, was about $29,000. The bill of sale of the lumber was executed about a week after the execution of the mortgage.

Ques. Are you, or have you, been in the employ of the Messrs. Grant? and if so, how long, and in what capacity?

Ans. I am, and have been since the middle of July acting as their agent in replevying and shipping the property mentioned in the bill of sale to them.

40 Ques. At the time of the execution of this mortgage to the Grants, where was your family staying, and of whom did it consist?

Ans. My trunks were at my wife's folks in Brooklyn. It is uncertain where we were on that day. My family consisted at that time of my wife and two children.

Ques. What is your wife's father's name and occupation?

Ans. His name is James Phillips, and his occupation that of a caulker.

Ques. When you left Buffalo about the 6th of February, did your family go with you? and if so, to what place did you first go with them?

Ans. They did. We went to my father's in New York.

Ques. Where did you send your baggage to?

Ans. Part of it went with us, but the principal part of it went to Brooklyn to my wife's father. We took, I am confident, one trunk to my father's.

Ques. How long did you remain at your father's?

Ans. Two or three days at that time.

Ques. What is his name and occupation?

Ans. Gabriel P. B. Hoyt, and he is a lumber merchant.

Ques. When you left your father's, did you go to your wife's father's?

Ans. We did.

Ques. Did your family not continue to reside at your wife's

41 father's until after the execution of this mortgage to the Grants?

Ans. My family headquarters were at my wife's father's.

Ques. How long a visit did you make thereafter at your father's?

Ans. Not longer than two or three days.

Ques. Did all of your family come over?

Ans. Yes.

Ques. Did you make more than one such visit? and if so, how many before the execution of the Grant mortgage?

Ans. Not more than two.

Ques. When you removed your baggage from your wife's father's, where did you go?

Ans. We went to the house where I now reside, in Hall street in Brooklyn.

Ques. When in New York or Brooklyn did you reside with your family wherever they were?

Ans. I did.

Ques. Where was your washing done?

Ans. My wife bossed that arrangement.

Ques. Am I to understand you to say that in your judgment there remains of the indebtedness to the Grants, of which you have spoken, $8,000 to $10,000?

Ans. Yes, sir.

Ques. Did you or do you expect to pay board to your father-in-law, and for how long?

42 Ans. I did, from the time I went there, until I went to house-keeping.

Re-direct examination:

Ques. When you went to your father-in-law's, did you go as a boarder or a visitor?

Ans. I went with the intention of paying board, if I should remain any length of time.

Ques. Did you start from here with the intention of keeping house in the city of New York, or living with your father-in-law?

(Objected to by Mr. Rogers on the ground that the question is leading.)

Answer taken subject to objection.

My intention was to purchase a house in the city of New York for a residence.

Ques. Did you go to your father-in-law's with the intention of remaining there temporarily or permanently?

Ans. Temporarily, until I could find a residence in New York.

Ques. Did you make any arrangement with your father-in-law as to your boarding with him before you went there?

Ans. I did not.

Ques. When did you conclude to make Brooklyn your place of residence?

Ans. Not until about the 1st of May.

Ques. Why did you conclude to make your residence in Brooklyn?

Ans. Because I was better suited to do so; I could not get a

43 house in New York to suit me.

Ques. At the time of the execution of the mortgage to the Grants, was Zahn largely indebted?

Ans. He was.

G. HOYT.

Taken, subscribed, and sworn before me, this 27th day of November, 1865.

DENNIS BOWEN, *U. S. Commissioner.*

44 *Mortgage on vessel.*

To all to whom these presents shall come, greeting:

Know ye, that I, Gabriel Hoyt, of the city of Buffalo, in the State of New York, and sole owner of the schooner or vessel called the Robert Emmett, of the burden of two hundred and forty-seven $\frac{7}{95}$ tons, or thereabouts, of the first part, being justly indebted to White's Bank of Buffalo, of the second part, in the sum of four thousand dollars, upon any drafts, notes, or any other indebtedness now made, or hereafter made, have, for the purpose of securing the payment of the said debt, drafts, notes, &c., and the interest thereof granted, bargained, sold, and mortgaged, and by these presents do grant, bargain, sell, and mortgage, unto the said party of the second part, his executors, administrators, and assigns, of said schooner, vessel, together with whose of the mast, bowsprit, sails, boat, anchors, cables, and all other necessaries thereunto appertaining and belonging. The certificate of the enrollment of which said schooner or vessel is as follows, to wit:

No. 51.—Enrollment.

District of Buffalo Creek, port of Buffalo.

45 In conformity to an act of Congress of the United States of America entitled "An act for enrolling and licensing ships and vessels, &c.," passed the 18th February, 1793; and "An act to regulate the foreign and coasting trade, on the northern, northeastern, and northwestern frontiers of the United States, and for other purposes," passed the 2d March, 1831; and *and* also, "An act to provide for recording the conveyances of vessels and for other purposes," passed July 30, 1850.

Gabriel Hoyt having taken or subscribed the oath required by the said acts, and having sworn that he resides at Buffalo, N. Y., and that he is a citizen of the United States, and sole owner of the schooner or vessel called the Robert Emmett, whereof J. W. Brown is at present master; and as he hath sworn that he is a citizen of the United States, and that the said ship or vessel was built at Buffalo, N. Y., in the year 1847, as appears by the certificate of her last enrollment at this port, April 2d, 1858, and numbered 5, now surrendered, having changed owners. And the said enrollment having certified that the said schooner vessel has one deck, and that her length is 114 feet, 10 inches; her breadth is 25 feet, 3 inches; her depth, 9 feet, 3 inches; and that she measures two hundred and forty-seven

tons, 7 ninety-fifths, that she is a schooner; has two masts, square stern, and no figure-head.

46 And the said Gabriel Hoyt having agreed to the description and admeasurement above specified, and sufficient security having been given, in conformity with the terms of the said acts, the said schooner has been duly enrolled at the port of Buffalo.

Given under my hand and seal of office, at the port of Buffalo, in the said district, this 7th day of April, in the year one thousand eight hundred and sixty-three.

[L. S.] A. L. BENNETT, *D. Collector.*

To have and to hold the said schooner or vessel, tackle, apparel, and furniture, and the appurtenances thereunto belonging unto them, the said White's Bank, their executors, administrators, and assigns, to the sole and only proper use, benefit, and behoof of them, the said White's Bank, their successors, administrators, and assigns forever. Provided always, and the condition of these presents is such, that if the said party of the first part, his executors or administrators, shall pay, or cause to be paid, to the said party of the second part, their successors, administrators, or assigns, the debt aforesaid, with the interest thereof from the twenty-second day of May, A. D. 1863, as it becomes due, then these presents shall be void and of no

47 effect; subject, however, to the provisions hereinafter contained; and the said party of the first part doth hereby agree to pay the same accordingly.

But if default be made in such payment, the said party of the second part is authorized to take possession of the said schooner or vessel, and all the before-mentioned property and appurtenances, and to sell and convey the same, or so much thereof as may be necessary to satisfy the said debt, interest, and reasonable expenses, after a notice of (30) thirty days to be given by White's Bank, and to retain the same out of the proceeds of such sale, the overplus (if any) to belong and be returned to the said party of the first part.

And it is further agreed, that on such sale the party of the second part, their successors, administrators, or assigns, may become the purchaser or purchasers.

And the said party of the first part doth further covenant and agree to and with the said party of the second part, their successors, administrators, and assigns, that he will procure the said schooner or vessel to be insured against loss or damage by fire, and also against marine risks and disasters, in some good and responsible in-

48 surance company or companies, to be selected or approved by the said party of the second part, for an amount at least equal to the amount which shall from time to time remain unpaid upon the said indebtedness, and that he will keep such policy or policies of insurance renewed from time to time, and will keep the same assigned to the said party of the second part until the said indebtedness is paid, as a collateral security for the payment of said indebtedness. And if the said party of the first part shall at any time fail to procure and assign such policy or policies of insurance, or shall at any

time fail to renew the same, the said party of the second part, their successors, administrators, or assigns, are hereby authorized to renew such policy or policies of insurance, and the amount which they shall be compelled to pay therefor shall be considered a part of the indebtedness hereby intended to be secured, and shall be repaid to said party of the second part, their successors, administrators, or assigns, on demand, with interest from the time of such payment.

In witness whereof the party of the first part hath hereunto set his hand and seal, this twenty-second day of May, in the year of our Lord one thousand eight hundred and sixty-three.

49 G. HOYT.

Sealed and delivered in the presence of—

[SEAL.] JAMES H. MADISON.

Internal revenue stamp, $2, cancelled.

STATE OF NEW YORK, *County of Erie, City of Buffalo, ss:*

On this thirteenth day of December, 1865, before me, personally came Gabriel Hoyt, to me known to be the individual described in and who executed the within instrument, and he acknowledged the execution thereof.

L. K. HADDOCK,
Notary Public.

STATE OF NEW YORK, *Erie County Clerk's Office, ss:*

I hereby certify that I have compared the annexed copy chattel mortgage and copy indorsements thereon with an original chattel mortgage and its indorsements, entered and on file in this office, and find the same to be true transcripts of and from the said originals, and the whole of each thereof and the said original mortgage was filed in this office on the 5th day of June, 1863, at 12¾ p. m.

In witness whereof I have hereto set my hand and affixed the seal of said county, at Buffalo, this 14th day of December, 1865.

[SEAL.] J. H. FISHER, *Dep. Clerk.*

[5-ct. stamp, cancelled.]

DISTRICT OF BUFFALO CREEK, *Port of Buffalo.*

Received for record June 12, 1863, at 10½ o'c. a. m., and recorded in liber 6 of mortgage, at page 148.

A. L. BENNETT,
Deputy Collector.

50 18.71.

$2,000. BUFFALO, *Feb'y* 6. 1865

Forty-five days after date I promise to pay to the order of F. Gridley, esq'r., cashier, two thousand dollars, at Continental Bank, New York, value received.

No. G. HOYT.

Due M'ch 26.

U. S. inter. rev. stamps of 4 25 cts. affixed and cancelled.

UNITED STATES OF AMERICA, *State of New York, ss:*

I, Leslie Irving, notary public, duly commissioned and sworn, dwelling in the State of New York, do hereby certify that on the 25th day of March, in the year of our Lord one thousand eight hundred and sixty-five, at the request of the Continental Bank, in New York, the original bill or d'f't hereunto annexed, dated Mar. 23, 1865, was presented at the Continental Bank, N. Y., to the paying teller, and payment thereof demanded, which was refused. Whereupon I, the said notary, at the request aforesaid, did protest, and by these presents do publicly and solemnly protest, as well against the drawer and indorsers of the said bill or d'f't as against all others whom it doth or may concern, for exchange, re-exchange, and all costs, damages, and interest already incurred, and to be hereafter incurred, for want of payment of the same.

In testimony whereof I have hereunto subscribed my name and affixed my notarial seal, in the city of New York aforesaid.

[SEAL.] LESLIE IRVING,
Notary Public.

[25-ct. int. rev. stamp, cancelled.]

51 $2,000. NEW YORK, *March 10th*, 1865

Forty-five days after pay to the order of F. Gridley, cash'r., two thousand dollars, value received, and charge the same to account of
G. HOYT, *Buffalo, N. Y.*

To WM. B. HOYT,
280 *Cherry St., N. Y.*

U. S. int. rev. stamp, $1, cancelled.

UNITED STATES OF AMERICA, *State of New York, ss:*

I, Leslie Irving, notary public, duly commissioned and sworn, dwelling in the State of New York, do hereby certify, that on the 27th day of April, in the year of our Lord one thousand eight hundred and sixty-five, at the request of the Continental Bank in New York, the original bill hereunto annexed dated March 24th, 1865, was presented at the Continental Bank in N. Y. to the paying teller and payment thereof demanded was refused.

Whereupon I, the said notary, at the request aforesaid, did protest, and by these presents do publicly and solemnly protest, as well against the drawer and indorser of the said bill as against all others whom it doth or may concern, for exchange, re-exchange, and all costs, damages, and interest already incurred and to be hereafter incurred for want of payment of the same.

In testimony whereof I have hereunto subscribed my name and affixed my notarial seal in the city of New York aforesaid.

[SEAL.] LESLIE IRVING, *Notary Public.*

Int. rev. 25 cents, cancelled.

52 *Bill of sale.—Enrolled vessel.*

4 $2 50, and 1 $2 int. rev. stamps, cancelled.

To all whom these presents shall come, greeting:

Know ye, that we, Gabriel Hoyt, of Buffalo, N. Y., ($\frac{1}{2}$,) and Henry Zahn, of Tiffin, Ohio, ($\frac{1}{2}$,) sole owners of the schooner or vessel called the Robert Emmett, of Buffalo, of the burden of two hundred forty-seven and 7-95 tons or thereabouts, for and in consideration of the sum of twelve thousand dollars, lawful money of the United States of America, to us in hand paid before the sealing and delivery of these presents, by William G. Grant and William G. Grant, junior, of the city, county, and State of New York, comprising the firm of William G. Grant and son, the receipt whereof we do hereby acknowledge, and are therewith fully satisfied, contented, and paid, have bargained and sold, and by these presents do bargain and sell, unto the said William G. Grant and William G. Grant, junior, their heirs, executors, administrators and assigns, the whole of the said schooner or vessel; together with her tackle, furniture and apparel,
53 the mast, bowsprit, sails, boat, anchors, cables, and all other necessaries thereto appertaining and belonging: the certificate of enrollment of which said schooner or vessel is as follows, to wit:

Enrollment permanent.

District of Buffalo creek, port of Buffalo.—No. 51.

Enrollment in conformity to an act of Congress of the United States of America, entitled "An act for enrolling and licensing ships and vessels, &c.," passed 18 February, 1793, and an act to regulate the foreign and coasting trade on the northern, northeastern, and northwestern frontiers of the United States, and for other purposes, passed March 2d, 1831, and also an act entitled "An act to provide for recording the conveyances of vessels, and for other purposes," passed July 29, 1850. Gabriel Hoyt having taken or subscribed the oath required by the said acts, and having sworn that he resides at Buffalo, N. Y., and that he is a citizen of the United States, and sole owner of the ship or vessel called the schooner Robert Emmett, of Buffalo, whereof T. Brown is at present master, and as he hath sworn
54 that he is a citizen of the United States, and that the ship or vessel was built at Buffalo, State of New York, in the year 1847, as appears by the certificate of her last enrollment at this port, April 2, 1858, and numbered 5, now surrendered, having changed owners.

And the said enrollment having certified that the said schooner has one deck and two masts, and that her length is 174 feet 10 inches,
Her breadth ..... 25 feet 3 inches,
Her depth ..... 9 feet 3 inches,
and that she measures two hundred forty-seven, 7-95 tons, and that she is a schooner, has a square stern and no figure-head.

And the said Gabriel Hoyt having agreed to the description and admeasurement above specified, and sufficient security having been given according to the said acts, the said schooner has been duly enrolled at the port of Buffalo, N. Y.

Given under my hand and seal of office at the port of Buffalo, in the said district, this 7th day of April, in the year one thousand eight hundred and six-three.

A. L. BENNETT, *D. Collector.*

To have and to hold the said schooner or vessel and appurtenances thereto belonging unto them, the said William G. Grant and
55 William G. Grant, jr., their heirs, executors, administrators, and assigns, forever: And we the said Gabriel Hoyt and Henry Zahn have promised, convenanted, and agreed, and by these presents do promise, covenant, and agree, for ourselves, our heirs, executors, administrators to and with the said William G. Grant and William G. Grant, jr., their heirs, executors, administrators, and assigns, to warrant and defend the said schooner or vessel, and all the other before-mentioned appurtenances against all and every person and persons whatsoever. Provided that if the said Gabriel Hoyt and Henry Zahn shall pay the sum of twelve thousand (12,000) dollars and interest from the date hereof as follows: $12,000 and interest from the date hereof on the first day of October, 1865, then this transfer to be void and of no effect, but in case of non-payment at the time above-mentioned of any of the above sums, the said Wm. G. Grant and Wm. G. Grant, jr., shall have full power to take possession of said property, and apply the same in payment of the said debt, or to sell the same at public or private sale, and the avails to apply in payment of the above debt, and in case the said Wm. G. Grant and Wm. G. Grant, jr., shall at any time deem them-
56 selves unsafe, it shall be lawful for them to take possession of such property, and sell the same at public or private sale, previous to the time above-mentioned for the payment of said debt, applying the proceeds as aforesaid, after deducting all expenses of the sale and keeping of the said property. And the said hereby agrees that in case of the non-payment of any of the above sums as above-mentioned, the whole sum secured hereby shall at once become due and payable, and the said Gabriel Hoyt and Henry Zahn, for themselves, their heirs, executors, administrators, or assigns, covenant and agree to pay unto the said William G. Grant and William G. Grant, jr., their heirs, executors, administrators, or assigns, the said sum of twelve thousand dollars and interest thereon as above specified.

In testimony whereof, we the said Gabriel Hoyt and Henry Zahn have hereunto set our hands and seals, this 28th day of March, one thousand eight hundred and sixty-five.

Sealed and delivered in presence of—

[SEAL.] G. HOYT.

[SEAL.] HENRY ZAHN.

STATE OF NEW YORK, *City and County of New York, ss:*

Personally appeared before me Gabriel Hoyt and Henry Zahn, to me know to be the individuals described in and who
57 executed the above indenture and acknowledged the within bill of sale to be their free act and deed.

In testimony whereof I have hereunto set my hand and seal of office, this 28th day of March, in the year one thousand eight hundred and sixty-five.

[SEAL.] WASH'R R. NICHOLS,
Notary Public, 10 *Wall st., N. Y.*

OFFICE OF THE REGISTER OF DEEDS, &c.,
City and County of New York, ss:

I have compared the annexed copy with an indenture filed in this office, on the sixth day of April, A. D. 1865, at 2 o'clock 25 min. p. m., by the number 970½, and certify the same to be a correct transcript therefrom, and the whole of said instrument.

In testimony whereof, I have hereunto subscribed my name and affixed my official seal, this twenty-first day of November, 1865.

JOHN McCOOL, *Register.*

DISTRICT OF BUFFALO CREEK, *Port of Buffalo.*

Received for record, April 3d, 1865, at 11 o'clock a. m., and recorded in liber 7 of bill of sales at page 48.

A. L. BENNETT, *Dep. Collector.*

Record and return to M. C. & L. E. Riggs, attorneys, &c., 10 Wall street.

58 For value received we do hereby sell, assign, and transfer to White's Bank of Buffalo a certain mortgage upon the Robert Emmett, of Sandusky, executed by Gabriel Hoyt and Henry Zahn, to Gilliam G. Grant and William G. Grant, jr., and the money received thereby; which mortgage is dated 28th of March, 1865, and is recorded in the collector's office at the port of Buffalo in liber seven of bills, at page 48. And we hereby authorize the said party of the second part in our name, or otherwise, but at its own costs and charges, to collect and enforce payment thereof against said vessel, or the remnants of the proceeds of sale of said vessel now in the registry of the district court of the northern district of New York.

Witness our hands and seal this 10th October, 1865.

[SEAL.] WM. G. GRANT.
[SEAL.] WM. G. GRANT, JR.
Witness: A. T. BUCKHART.

[U. S. int. rev. mortgage, $5, cancelled.]
[U. S. int. rev. probate of will, $5, cancelled.]
[U. U. int. rev. two dollar mortgages, cancelled.]

STATE OF NEW YORK, *County of Erie, City of Buffalo, ss:*

59 On this 20th day of November, 1865, personally appeared before me, William G. Grant, jr., to me known to be the in-

dividual by that name described in, and who executed the within instrument, and he acknowledged the execution thereof.

CHAS. H. PARK,
Com'r of Deeds for Buffalo.

[U. S. int. rev. 5 cents, cancelled.]

STATE OF NEW YORK, *City and County of New York, ss:*

On the 1st day of December, A. D. 1865, before me personally came William G. Grant, to me known to be one of the individuals described in, and who executed the within instrument, and acknowledged that he executed the same.

HORATIO B. CARR,
Notary Public N. Y. City and County.

STATE OF NEW YORK, *City and County of New York, ss:*

I, William C. Connor, clerk of the city and county of New York, and also clerk of the supreme court for said city and county, the same being a court of record, do hereby certify that Horatio B. Carr, whose name is inscribed to the certificate of the proof or ac-
60 knowledgment of the annexed instrument, and therein written, was, at the time of taking such proof or acknowledgment, a notary public in and for the city and county of New York, dwelling in said city, commissioned and sworn, and duly authorized to take the same. And further, that I am well acquainted with the handwriting of such notary, and verily believe that the signature to the said certificate of proof or acknowledgment is genuine. I further certify that said instrument is executed and acknowledged according to the law of the State of New York.

In testimony whereof I have hereunto set my hand, and affixed the seal of said court and county, the 1 day of Dec., 1865.

[SEAL.] WM. C. CONNOR, *Clerk.*

[5 cent-stamp, cancelled.]

61 THE STATE OF OHIO, *County of Sandusky, ss:*

I, John K. Hard, of lawful age, and a resident of said county, being first duly sworn, make oath and say: That at the time of the execution and delivery of a mortgage on the schooner Robert Emmett, by Henry Zahn, of Tiffin, Ohio, to Robert Smith, of Green Springs, Ohio, and which said mortgage was recorded in the collector's office at Sandusky city, Ohio, on the 19th day of June, A. D. 1865, I was the attorney-at-law and in fact for the said Robert Smith, and as such attorney had in my possession for collection the promissory notes and bills of exchange which said mortgage was given to secure. At the time of the execution, delivery, and record of said mortgage, and the extension of the time of payment of said promissory notes and bills of exchange, the said Henry Zahn owned in fee simple and in his own right four hundred acres of land in Seneca county, in the State of Ohio, of the then and present value in money of twenty thousand dollars, ($20,000,) and which was unencumbered, excepting by a mortgage for balance of purchase money due, which, with accrued interest, then amounted to a sum
62 not exceeding $10,000. The said Henry Zahn owned at the

same time in fee simple, and in his own right, one acre, more or less, of land in the 2d ward of the city of Tiffin, of the then value of one thousand dollars, ($1,000,) and which, in July, 1865, he sold for one thousand dollars in cash; said last-mentioned lot of land was, at the time of the execution and delivery of said mortgage on the schooner Robert Emmett, wholly unencumbered. The said Henry Zahn was also, at the time of the execution and delivery of said last-mentioned mortgage, the owner of 250 sheep, 10 horses, 6 wagons, 5 sets double harness, 1 carriage, 1 buggy wagon, 1 sawing machine, 1 reaper's mower, 20 hogs, 3 cows, 800 bushels of barley, 800 bushels of oats, 200 bushels of rye, 500 bushels of wheat, 30 tons of hay, 70 acres of corn in the ground, which said articles of personal property were of the value of $6,000, and were sold in Oct., 1865, at public auction, for over $4,000. Said articles of personal property were at the time of the execution and delivery and record of said last-mentioned mortgage, wholly unencumbered, and remained unencumbered up to and until the 22d day of July, 1865. The said Henry Zahn

63 war also, at the time herein lastly named, the owner of 1 piano, 3 sofas, 2 tete-a-tetes, 4 easy chairs, 2 marble top tables, 8 fine carpets, 4 pairs rich window curtains, 2 marble-top stands, 1 marble-top washstand, 2 marble-top bureaus, 2 hat-racks, 2 hall and 2 stair carpets. 1 iron safe, and a quantity of dining room and kitchen furniture in addition to the above, altogether of the value of $2,500 in money, which said last-mentioned articles of personal property was, at the time of the execution and delivery of said mortgage, wholly unencumbered up to and until the 28th day of July, A. D. 1865. At the time of receiving from Zahn said mortgage for Smith, and granting to Zahn an extension of time for five months, I called upon John F. Huss, of the firm of Tomb, Huss & Co., who then and had been, for the ten years then last past, the bankers of said Zahn, and inquired concerning the credit and standing of said Zahn, and was assured by said Huss that said Zahn's credit was then good, and his means of payment ample. That said Zahn was then short and in need of money, because he had carried through the winter a very large am't of lumber, and had not yet been able to send it forward; but that when Zahn should realize from the sales of lumber on hand, and being forwarded to market, he should have ample means to pay all his indebtedness.

64 In addition to the property of said Zahn, hereinbefore mentioned, he was, at the time of the execution and delivery of said mortgage to Smith, the owner of 8 railroad cars, and about 800,000 feet of timber and lumber, all being in other counties than the county of his residence, and consequently liable to attachment in favor of his creditors at any time. Said last-mentioned property was more or less encumbered, but not to the amount of its value, by nearly $4,000; and was, on the 28th day of July, 1865, mortgaged to Tomb, Huss & Co., by whom it has been sold.

This affidavit is made in addition to the one heretofore made by me in this case.

J. K. HARD.

Subscribed in my presence, and sworn to before me, by the said John K. Hard, on this 21st day of December, A. D. 1865.

[L. S.] HANER EVERETT,
Notary Public.

65 U. S. district court, in admiralty.

WHITE'S BANK OF BUFFALO
vs.
THE PROCEEDS OF THE SCHOONER ROBERT EMMETT.

It is stipulated that the foregoing affidavits may be read on the trial of this case, subject only to objections as to materiality.

Dated Buffalo, April 14, 1866.

L. K. HADDOCK.

66 THE STATE OF OHIO, *Sandusky County, ss:*

John K. Hard, of lawful age, being first duly sworn, makes oath and says that at the time of the execution of the mortgage on the schooner Robert Emmett, by Henry Zahn to Robert Smith, which mortgage was recorded at Sandusky, Ohio, in liber C, on pages 27 and 28, he, this deponent, was the attorney-at-law and in fact for the said Robert Smith, and as such attorney had in his possession the drafts or bills of exchange, and promissory notes mentioned in the condition of said mortgage, for the purpose of collecting or securing the payment of the same; that the said Robert Smith and this deponent then considered the said indebtedness unsafe unless payment of the same should be in some way secured by said Zahn, and that said Zahn was in such circumstances that he would soon fail and become insolvent. At the time of the execution and delivery of said mortgage, said Zahn owned and had in his possession property to an amount more than sufficient to pay said indebtedness; and this deponent, as the attorney of said Smith, could then, without any doubt, have secured the payment of the same by legal process against the property of said Zahn, and would have proceeded
67 at once to secure and collect said indebtedness had said Zahn not executed the mortgage aforesaid; that in consideration of the execution of said mortgage by said Zahn, this deponent, in pursuance of the instructions of said Smith, extended the time for the payment of said indebtedness to the 1st day of November, 1865, and forbore to secure or enforce the collection of said indebtedness until after said last-mentioned date.

And this deponent further says that before receiving said mortgage and extending the time for payment of said indebtedness, as hereinbefore mentioned, he, as the attorney of said Smith, caused the records at the custom-house in Sandusky, Ohio, to be examined, to ascertain whether any prior mortgage had been executed upon said schooner by said Zahn. And also inquired of said Zahn whether any other or prior mortgage had been executed by him or by G. W. Hoyt, his partner, upon said schooner.

Upon such examination no record was found of any mortgage upon said schooner; and upon such inquiry being made of said Zahn, he informed this deponent and said Smith that neither he nor said Hoyt had executed any mortgage whatsoever upon said schooner, and that the same was entirely free from any lien, and wholly unencumbered by mortgage or otherwise. And this deponent says that he
68 extended the time for payment of said indebtedness, and fully believing that said schooner was wholly unencumbered, and that said mortgage was an ample and good security for said indebtedness to the amount of its value.

This deponent further says that, in order to perfect said security, he, on behalf of said Smith, caused a transfer of a policy of insurance upon said schooner to be made to said Smith, and procured said Smith to guarantee the payment of a premium note given for said policy of insurance, amounting to about $500, which said premium notes the said Smith will be compelled to pay by reason of said guarantee.

And this deponent further says that since receiving said mortgage from said Zahn, he, said Zahn, has totally failed and became hopelessly insolvent, and has executed mortgages to his creditors other than said Smith upon all his personal and real property, to secure debts amounting to more than thirty thousand dollars, ($30,000,) and to more than double the value of all the property so mortgaged; and unless said Smith can enforce his lien upon said schooner, he will loose his said indebtedness, and fail entirely to collect the same.

J. K. HARD.

69 The foregoing affidavit was subscribed in my presence, and sworn to before me by the said John K. Hard, on this 11th day of December, 1865.

[SEAL.] HANER EVERETT,
Notary Public, Sand. Co., O.

70 STATE OF OHIO, *Sandusky County, ss:*

Robert Smith, being duly sworn, says that he is the owner and holder of the drafts or bills and notes mentioned in the condition of the mortgage from Henry Zahn to deponent, and which was recorded on the 17th of June, 1865, at Sandusky, in liber C, on pages 27 and 28; that said notes and drafts was negotiated to deponent before they became due for the full force thereof, and that he took the same in good faith; that at the time of the giving of said mortgage said notes and drafts were held and owned by said deponent, and then was and still are wholly unpaid and justly owing to him.

And said deponent further says that said mortgage was taken by him in good faith, and that he had no knowledge or notice of any kind as to the existence of any mortgage previously executed on said schooner Robert Emmett, but believed the said schooner free and clear of all encumbrances; that at the time said mortgage was executed to deponent said debt was, as deponent verily believes, easily collectable by deponent from property owned by said Henry

71 Zahn, in the State of Ohio; that deponent's attorney, Mr. J. K. Hard, to whom said mortgage was delivered by said Zahn for this deponent, agreed at the time said mortgage was given, and in consideration of the giving thereof, to extend the time of payment of said notes and drafts to November 1st, 1865, as deponent is informed by said attorney and verily believes; that, relying on the said mortgage security, and believing the same to be good, said deponent took no means to collect his said debt, or any part thereof, and that he had no notice of a mortgage on said schooner to the Messrs. Grant, or of a mortgage then to White's Bank of Buffalo until after deponent's said debt had became entirely uncollectable by the public and notorious insolvency of said Zahn; that the above-mentioned agreement, made by said Hard for deponent, was made by authority received from deponent.

ROBERT SMITH.

Sworn to before me, December 8th, 1865.
[SEAL.] O. S. BARTLETT,
Notary Public.

72 Be it remembered, that on the eleventh day of April, one thousand eight hundred and sixty-six, at the city of Tiffin, in the county of Seneca, and State of Ohio, personally appeared before me, G. J. Keen, a notary public within and for said county, duly appointed commissioner, and qualified by competent authority according to law; it having been made to appear on behalf of Robert Smith, that he, the said Robert Smith, is respondent in a certain suit now depending in the district court of the United States in and for the northern district of the State of New York, entitled "White's Bank of Buffalo, petitioner," *vs.* "The proceeds of the schooner Robert Emmett." That the testimony of John T. Huss and Henry Zahn are material and necessary for him, (the said respondent,) in the defence of said suit, and that all of said parties, to wit, the said John T. Huss and Henry Zahn, live at the city of Tiffin, in the county of Seneca, and State of Ohio, and the said city of Tiffin is more than one hundred miles from the city of Buffalo, in the State of New York, where the court at which the said respondent expects the said cause will be tried was appointed by law to be held. That the
73 said White's Bank of Buffalo, the petitioner, as respondent is informed and believes, is a banking corporation, organized under the laws of the State of New York, and has its office and place of doing business at the said city of Buffalo, and that the proctor of said petitioner resides at the city of Buffalo aforesaid; and the said respondent, Robert Smith, requests that the said John T. Huss and Henry Zahn may be examined according to the directions of the act of Congress in such case made and provided.

Whereupon I ordered the said John T. Huss and Henry Zahn should be examined de bene esse, before me, at my office in the city of Tiffin, in the county of Seneca and State of Ohio, on Wednesday, the eleventh day of April, A. D. 1866, at 8 o'clock in the forenoon, and the said

Upon such examination no record was found of any mortgage upon said schooner; and upon such inquiry being made of said Zahn, he informed this deponent and said Smith that neither he nor said Hoyt had executed any mortgage whatsoever upon said schooner, and that the same was entirely free from any lien, and wholly unencumbered by mortgage or otherwise. And this deponent says that he
68 extended the time for payment of said indebtedness, and fully believing that said schooner was wholly unencumbered, and that said mortgage was an ample and good security for said indebtedness to the amount of its value.

This deponent further says that, in order to perfect said security, he, on behalf of said Smith, caused a transfer of a policy of insurance upon said schooner to be made to said Smith, and procured said Smith to guarantee the payment of a premium note given for said policy of insurance, amounting to about $500, which said premium notes the said Smith will be compelled to pay by reason of said guarantee.

And this deponent further says that since receiving said mortgage from said Zahn, he, said Zahn, has totally failed and became hopelessly insolvent, and has executed mortgages to his creditors other than said Smith upon all his personal and real property, to secure debts amounting to more than thirty thousand dollars, ($30,000,) and to more than double the value of all the property so mortgaged; and unless said Smith can enforce his lien upon said schooner, he will loose his said indebtedness, and fail entirely to collect the same.

J. K. HARD.

69 The foregoing affidavit was subscribed in my presence, and sworn to before me by the said John K. Hard, on this 11th day of December, 1865.

[SEAL.] HANER EVERETT,
Notary Public, Sand. Co., O.

70 STATE OF OHIO, *Sandusky County, ss:*

Robert Smith, being duly sworn, says that he is the owner and holder of the drafts or bills and notes mentioned in the condition of the mortgage from Henry Zahn to deponent, and which was recorded on the 17th of June, 1865, at Sandusky, in liber C, on pages 27 and 28; that said notes and drafts was negotiated to deponent before they became due for the full force thereof, and that he took the same in good faith; that at the time of the giving of said mortgage said notes and drafts were held and owned by said deponent, and then was and still are wholly unpaid and justly owing to him.

And said deponent further says that said mortgage was taken by him in good faith, and that he had no knowledge or notice of any kind as to the existence of any mortgage previously executed on said schooner Robert Emmett, but believed the said schooner free and clear of all encumbrances; that at the time said mortgage was executed to deponent said debt was, as deponent verily believes, easily collectable by deponent from property owned by said Henry

71 Zahn, in the State of Ohio; that deponent's attorney, Mr. J. K. Hard, to whom said mortgage was delivered by said Zahn for this deponent, agreed at the time said mortgage was given, and in consideration of the giving thereof, to extend the time of payment of said notes and drafts to November 1st, 1865, as deponent is informed by said attorney and verily believes; that, relying on the said mortgage security, and believing the same to be good, said deponent took no means to collect his said debt, or any part thereof, and that he had no notice of a mortgage on said schooner to the Messrs. Grant, or of a mortgage then to White's Bank of Buffalo until after deponent's said debt had became entirely uncollectable by the public and notorious insolvency of said Zahn; that the above-mentioned agreement, made by said Hard for deponent, was made by authority received from deponent.

ROBERT SMITH.

Sworn to before me, December 8th, 1865.
[SEAL.] O. S. BARTLETT,
Notary Public.

72 Be it remembered, that on the eleventh day of April, one thousand eight hundred and sixty-six, at the city of Tiffin, in the county of Seneca, and State of Ohio, personally appeared before me, G. J. Keen, a notary public within and for said county, duly appointed commissioner, and qualified by competent authority according to law; it having been made to appear on behalf of Robert Smith, that he, the said Robert Smith, is respondent in a certain suit now depending in the district court of the United States in and for the northern district of the State of New York, entitled "White's Bank of Buffalo, petitioner," *vs.* "The proceeds of the schooner Robert Emmett." That the testimony of John T. Huss and Henry Zahn are material and necessary for him, (the said respondent,) in the defence of said suit, and that all of said parties, to wit, the said John T. Huss and Henry Zahn, live at the city of Tiffin, in the county of Seneca, and State of Ohio, and the said city of Tiffin is more than one hundred miles from the city of Buffalo, in the State of New York, where the court at which the said respondent expects the said cause will be tried was appointed by law to be held. That the
73 said White's Bank of Buffalo, the petitioner, as respondent is informed and believes, is a banking corporation, organized under the laws of the State of New York, and has its office and place of doing business at the said city of Buffalo, and that the proctor of said petitioner resides at the city of Buffalo aforesaid; and the said respondent, Robert Smith, requests that the said John T. Huss and Henry Zahn may be examined according to the directions of the act of Congress in such case made and provided.

Whereupon I ordered the said John T. Huss and Henry Zahn should be examined de bene esse, before me, at my office in the city of Tiffin, in the county of Seneca and State of Ohio, on Wednesday, the eleventh day of April, A. D. 1866, at 8 o'clock in the forenoon, and the said

ry Zahn being carefully examined and cautioned, and duly sworn to testify the whole truth, and nothing but the truth, saith as follows, to wit:

Question. Are you acquainted with respondent, Robert Smith? If yea, state if were indebted to him; and if so, how and when, the nature of your business transactions with him, and your ability to pay.

Answer by the witness. I am well acquainted with said
74 Robert Smith; I was indebted to him for lumber that I bought of him in the months of September, October, and November, in the year 1864; my indebtedness to said Robert Smith was for lumber purchased of him at the times above stated, which lumber I shipped to G. Hoyt, at Buffalo, New York.

Question. You will state fully the business you were engaged in, your business transactions generally; your means of paying your liabilities at the time of your indebtedness to Smith since that time; state fully.

Answer. I have been in the lumber business since 1841; in the year 1863 I agreed with G. Hoyt, of Buffalo, to buy and ship to said Hoyt lumber on joint account and draw on him for the joint cost of said lumber. At the time I made this agreement with Hoyt I was in good circumstances and solvent; I was worth $30,000 in real estate and personal property, which was encumbered to the amount of $10,000; I also owned one-half of the brig Let. Blossom, worth at that time $5,000; my indebtedness on said brig was only $250 for insurance. As I before stated, I became indebted to Robert Smith for lumber I bought of him in the months of September, October, and November, 1864, which lumber I shipped to G. Hoyt, and to secure the said Robert Smith, I executed and delivered to him in good faith a mortgage on the schooner Robert Em-
75 mett. At the time I so executed and delivered to said Smith said mortgage, I was amply able to pay my indebtedness and had sufficient property to enable me to do so; and said Smith and his attorney, J. K. How, inquired of me at the time of the execution and delivering of said mortgage, if *if* there were other mortgages or liens upon said vessel, and I stated to them, in good faith, that there were no other liens or mortgages on said vessl; I was perfectly solvent, as before stated, until about the 12th of July, 1865, at which time I mortgaged my personal and real estate to Tomb, Huss & Co., bankers, at Tiffin, O., to pay said G. Hoyt's protested paper, amounting to $22,000, and to secure my Tiffin creditors.

I was aware at the time I executed and delivered the mortgage on the *the* Robert Emmett to Mr. Smith, that said G. Hoyt had given a mortgage to White's Bank of Buffalo; but I was informed by said Hoyt, and I believed it to be true, that the mortgage by him executed to said White's Bank of Buffalo had been by him paid and satisfied, and in proof thereof, said Hoyt showed me his acconnt against said bank up to February, 1864, for $1,800. I searched the custom-house records in Buffalo, and also the county records, and found no record of renewal, and I became satisfied that there was no other

76 mortgage upon said schooner at the time I executed and delivered the said mortgage to said Robert Smith. The mortgage executed jointly by Hoyt and Zahn to Grant & Son was given without consideration, as there was no bona fide indebtedness from Hoyt and Zahn at that time to said Grant & Son. Said mortgage was so executed for the purpose keeping said property from said Hoyt and creditors. I now state that Robert Smith cannot possibly collect his claims against me for the plain reason that I am unable to pay the same; I am insolvent. But at the time he extended payment and I executed and delivered to him the mortgage on the schooner Robert Emmett, he could have collected it easily by execution, for I then had property more than sufficient, and in good faith I represented to him and his attorney at the time of the execution and delivery of said mortgage, that there was no other lien or mortgage upon said schooner.

Being examined by Mr. Haddock, attorney for White's Bank, the witness testified as follows:

Question. When and of whom did you take the title to the schooner Robert Emmett?

Answer. Gabriel Hoyt made a bill of sale to me of one-half of the Robert Emmett in February, 1865; the bill of sale was drawn
77 by T. C. Davis, esq'r, at his office in Buffalo, N. Y.

Question. Did you then know of the existence of the mortgage to White's Bank?

Answer. I did.

Question. Did you and Hoyt execute a mortgage upon the Robert Emmett to W. G. Grant and W. G. Grant, jun'r, and if so, when?

Answer. We executed such a mortgage in the city of New York, March 28th, 1865, and dated that day.

Question. When and of whom did you obtain the remaining one-half of the Robert Emmett?

Answer. On the 27th of April, 1865, G. Hoyt executed to me a bill of sale of the remaining half of the Robert Emmett.

Question. Where was the bill of sale made?

Answer. In the city of New York.

Question. What was the consideration of the bill of sale?

Answer. No consideration was made to me at the time the
78 sale was made to enable me to settle and discharge the joint liabilities of Hoyt and Zahn with facility.

Question. When did you examine the records of the county clerk's office at Buffalo and custom-house to see whether the White's Bank mortgage had been renewed?

Answer. About the 31st of March, 1865, I found the record of the mortgage, but no renewal. T. C. Davis esq., went with me.

Question. When you and Hoyt executed the mortgage to Grant & Son, what was said about the White's Bank mortgage?

Answer. I think I remarked to Grant that the White's Bank mortgage was not refiled, and either I or Grant telegraphed to T. C. Davis, esq., to ascertain whether it had been refiled.

Question. When did Hoyt show you his account with White's Bank, and where was it?

Answer. Mr. Hoyt came to Tiffin the first week in February, 1864, and brought his bank book kept with White's Bank, and he showed it to me at that time.

Question. At the time of the execution of the mortgage to
79 the Grants, what property had Hoyt and Zahn, and how much had the Grants advanced thereon?

Answer. Hoyt shipped to Grant & Son lumber then on hand unsold of the value of between twenty and thirty thousand dollars they had made, advancing of which I was aware of, and held myself liable for forty thousand dollars.

Question. When did you first learn of Hoyt's indebtedness to White's Bank?

Answer. Mr. Hoyt informed me in New York, between the 6th and 10th of April, 1865.

HENRY ZAHN.

At the same time and place came John T. Huss, of lawful age, and of said Seneca county, Ohio, who being carefully examined and cautioned and duly sworn by me to testify the truth, the whole truth, and nothing but the truth, saith as follows, to wit:

Question. State your age, name, occupation, and place of residence.

Answer. I am thirty-two years of age. My name is John T. Huss. I am engaged in banking. Being a member of the firm of
80 Tomb, Huss & Co., bankers, of Tiffin, Ohio. I reside in the city of Tiffin, O.

Question. Are you acquainted with the witness Henry Zahn?

Answer. I am acquainted with Mr. Zahn.

Question. State, if you know, what were Mr. Zahn's pecuniary circumstances in May, 1865. His ability to pay his liabilities at that time, and prior thereto, and at the present time? State fully.

Answer. In May, 1865, Mr. Zahn had in his possession and under his control a large amount of real estate and personal property, and was, as I then believed, in good circumstances, and able to pay his debts; that was his pecuniary condition at that time and for a long period prior thereto. At the present time Mr. Zahn is insolvent, and debts cannot be collected from him.

Question. In the forepart of the year 1865, say in the months of May and June of said year, could a claim of six or seven thousand dollars have been collected from said Zahn?

Answer. Yes; I think such a claim at that time could have
81 been collected easily from Mr. Zahn.

JOHN T. HUSS.

STATE OF OHIO, *Seneca County, ss:*

I, G. J. Keen, a notary public in and for said county, do hereby certify the foregoing to be testimony of Henry Zahn and John T. Huss, as taken by me, Mr. Haddock, as attorney for White's Bank of Buffalo, being present to cross-examine.

Robert Smith, respondent, did not appear.

Witness my hand and seal notarial, at Tiffin, in the county and State aforesaid, this 11th day of April, A. D. 1866.

[SEAL.] G. J. KEEN,
Notary Public, Seneca County, Ohio.

My fees, $5.

82 *Bill of sale of vessel.*

To all to whom this bill of sale shall come:

Know ye that I, Henry Zahn, of Tiffin. Seneca co., Ohio, for and in consideration of the sum of six thousand dollars to me in hand paid at or before the ensealing and delivery of these presents, by Robert Smith, of Green Springs, of the county and State aforesaid, the receipt whereof is hereby confessed and acknowledged, have granted, bargained, sold, assigned, transferred, and delivered unto said Robert Smith the good schooner Robert Emmett, of Sandusky, together with all and singular her anchors, chains, cables, masts, rigging, tackle, apparel, and furniture, of every name, kind, and description whatsoever.

The certificate of whose enrollment is in the words and figures following, viz:

No. 41.—*Enrollment.*

DISTRICT OF SANDUSKY, *Port of Sandusky, O.:*

In conformity to an act of Congress of the United States of America, entitled "An act for enrolling and licensing ships and vessels, &c.," passed the 18th February, 1793, and "An act to regulate the foreign and coasting trade on the northeastern and northwestern frontiers of the United States, and for other purposes," passed
83 the 2d of March, 1831, and the acts of the 7th July, 1838, 3d of March, 1843, and July 29th, 1850, Henry Zahn, of Tiffin, O., owner, having taken or subscribed the oath required by the said acts, and having sworn that he is a citizen *citizen* of the United States, sole owner of the sch'r or vessel called the Robert Emmet, whereof Jo. L. Graham is at present master, and as he hath sworn is a citizen of the United States, and that the said ship or vessel was built at Buffalo, in the year 1847, as appears by her last enrollment, dated Sandusky, April 8th, 1865, No. 17 was surrendered, having changed owners. And said enrollment having certified that the said schooner vessel has one deck and two masts, and that her length is 114 feet and 5-10ths, her breadth is 25 feet and 0-10ths, her depth is 8 feet and 95-100, and that she measures 196 tons 2-100; that she is sch'r; has square stern and plain head.

And the said Henry Zahn having agreed to the description and admeasurement above specified, and sufficient security having been given in conformity with the terms of the enrolled at the port of Sandesky, O.

Given under my hand and seal of office, at the port of San-

84 dusky, in the said district, this 11th day of May, in the year one thousand eight hundred and sixty-5.

H. P. RADCLIFF,
Deputy Collector.

To have and to hold the said granted and described sch'r Robert Emmet and other the premises hereby granted, bargained, and sold, or mentioned or intended so to be, unto the said Robert Smith, his heirs and assigns, to his and their sole and only proper use, benefit, and behoof, forever. And the said Henry Zahn, for himself, heirs, executors, and administrators, does hereby covenant, promise, and agree to and with the said Robert Smith, his heirs and assigns; that at the time of the ensealing and delivery of these presents, I, the said Henry Zahn, is *is* the sole, true, and lawful owner of the said Robert Emmet and other premises hereby granted, bargained, and sold, or mentioned or intended so to be, and that I have in myself good power, right, and authority to sell and dispose of the same in manner aforesaid.

And furthermore, that I, the said Henry Zahn, will forever warrant and defend the sch'r Robert Emmet and other the premises hereby granted, bargained, and sold, or mentioned or intended so to be, unto the said Robert Smith, his heirs and assigns, against the

85 lawful claims or demands of all persons whatsoever; provided, however, that if the said Henry Zahn shall, on or before the first day of November, A. D. 1865, pay to the said Robert Smith the following claims with accruing interest thereon, to wit: two bills or drafts drawn by said Henry Zahn on G. Hoyt at Buffalo, N. Y., for $1,500 each, dated Dec. 19, 1864, one thereof payable 60 days from date, and the other thereof payable three months after date, both accepted by said Hoyt and protested for non-payment; and also three promissory notes dated February 27, 1865, one thereof for $1,000, payable at sight, one thereof for 1,000, payable thirty days after date, and the other thereof for $985 89, payable forty-five days after the date, together with all damages, costs of protest, and collection, then this sale shall be void, otherwise to be and remain in force.

In witness whereof the said Henry Zahn has hereunto set his hand and seal, at Tiffin, Ohio, this 5th day of June, A. D. 1865.

HENRY ZAHN. [L. S.]
[L. S.]

In presence of—
J. K. HARD.
G. J. KEEN.

$5 stamp, cancelled.
$1 stamp, cancelled.

86 STATE OF OHIO, *County of Seneca, ss:*

Be it remembered, that on the 5th day of June, A. D. 1865, before a notary public within and for said county and State, personally came Henry Zahn, the grantor in the foregoing bill of sale, and ac-

knowledged the signing and sealing thereof to be his voluntary act and deed for the uses and purposes therein mentioned.

In testimony whereof I have subscribed my name and affixed my seal, on the day and year aforesaid.

[SEAL.]

G. J. KEEN,
Notary Public, Sen. Co., O.

COLLECTOR'S OFFICE, *Port of Sandusky, O.*

Received for record the 17th day of Sune, A. D. 1865, at 7 o'clock p. m., and recorded in Liber C, on page 27 and 28.

JOHN HENRY, *Collector.*

Fee, 50 cts., paid.

87 At a special session of the district court of the United States for the northern district of New York, held at the city of Buffalo on the eighteenth day of April, 1866.

Present: Hon. David A. Smalley, district judge.

Final decree.

WHITE'S BANK OF BUFFALO
vs.
THE PROCEEDS OF THE SALE OF THE Schooner Robert Emmett.

This case came on to be heard upon the petition of White's Bank of Buffalo and the answer of Robert Smith, and also upon a stipulation filed in this case and upon certain evidence taken therein, and having been argued by Mr. Haddock for the petitioner and by Mr. Rogers for the said Robert Smith, and due deliberation having been had thereon, it is ordered, adjudged, and decreed, and this court by virtue of the power therein vested, doth hereby order, adjudge, and decree that the mortgage mentioned and set forth in the petition in this case was a valid and prior lien to all other mortgages upon the said schooner, and that the mortgage to Wm. G. Grant and Wm. G. Grant, jr., is a prior lien to the mortgage to said Smith, and that the said petitioner ought first to have and be paid the amount of
88 his claim and the costs of this suit out of the proceeds of the sale of said schooner now remaining in the registry of this court.

And it is further ordered, adjudged, and decreed that the clerk draw the necessary checks and pay the costs of this suit to be taxed, and the balance of said proceeds after the payment of said costs be paid to the said petitioner, unless the said Robert Smith, claimant, shall perfect his appeal from this decree within twenty days from the date hereof.

D. A. SMALLEY, *Judge.*

89 Circuit court of the United States for the northern district of New York.

WHITE'S BANK OF BUFFALO, petitioner and appellee,
vs.
THE PROCEEDS OF THE SALE OF THE Schooner Robert Emmett, Robert Smith, claimant and appellant.

To the circuit of the United States for the northern district of New York.

The petition of appeal of the above-named Robert Smith respectfully shows that a decree was lately made in the district court of the United States, bearing date the eighteenth day of April, 1866, in a certain cause in admiralty and maritime jurisdiction pending in the said court against the proceeds of the schooner Robert Emmett, wherein the above-named White's Bank of Buffalo was petitioner and the above-named Robert Smith was claimant and respondent, in and which said decree it was ordered, adjudged, and decreed that the mortgage mentioned and set forth in the petition in said cause was a valid and prior lien to all other mortgages upon the said schooner, and that the mortgage to William G. Grant and William G. Grant, jr., is a prior lien to the mortgage to the said Robert
90 Smith, and that the said petitioner ought first to have and be paid the amount of its claim and the costs of this suit out of the proceeds of the sale of the schooner now remaining in the registry of this court, which said decree of the said district court is, as this appellant is advised, erroneous and ought to be reversed.

Wherefore this appellant respectfully prays that the said decree may be reversed and that such other decree may be made by this court as shall be agreeable to equity and good conscience, and this appellant may be restored to all things which he has lost by said decree.

And this appellant, as in duty bound, will ever pray.

Dated May 4, 1866.

ROBERT SMITH.
BOWEN & ROGERS,
Proctors for Appellant.
SHERMAN S. ROGERS,
Advocate.

91 United States district court, in admiralty.

NORTHERN DISTRICT OF NEW YORK, *ss:*

To White's Bank, of Buffalo:

You are hereby cited and admonished to be and appear at a circuit court of the United States, to be held at Canandaigua, in and for the northern district of New York, on the third Tuesday of June, 1866, pursuant to an appeal from a decree of the district court of the

United States for the said district, wherein Robert H. Smith is appellant, and you are appellee, to show cause, if any there be, why the said decree should not be corrected and speedy justice be done to the parties in that behalf.

Witness Honorable Nathan K. Hall, district judge of the United States for the said district, this 4th day of May, in the year one thousand eight hundred and sixty-six.

N. K. HALL,
U. S. Dist. Judge, N. Dist. N. Y.

92 CITY OF BUFFALO, *County of Erie, ss:*

Henry K. Johnson being duly sworn, says that on the fifth day of May, 1866, at the city of Buffalo aforesaid, he served the within citation upon White's Bank of Buffalo, therein named, by handing to and leaving with F. Gridley, to him known to be the cashier thereof, a true copy of the same; and deponent further says that he at the same time exhibited to the said Gridley the within original, and the signature of the judge thereto.

HENRY K. JOHNSON.

Sworn before me, this 5th day of May, 1866.

FRANKLIN LOCKE,
Com'r of Deeds for Buffalo.

Petition.

93 District court of the United States for the northern district of New York, in admiralty.

WHITE'S BANK OF BUFFALO, petitioner,
vs.
THE PROCEEDS OF THE SCHOONER ROBERT EMMETT, Robert Smith, claimant and respondent.

The above-named respondent, conceiving himself agrieved by the final sentence or decree entered on the eighteenth day of April, 1866, in the above-entitled cause, does hereby appeal therefrom to the next circuit court of the United States to be held in and for the said district, and he prays that his appeal may be allowed, and that a transcript of the record and proceedings in the cause, duly authenticated, may be sent to the said circuit court.

BOWEN & ROGERS,
Proctors for Respondents.

Appeal allowed May 5th, 1866.

N. K. HALL,
Dist. Judge of the U. S., Northern District of New York.

94 District court of the United States for the northern district of New York.

I, George Gorham, clerk of the said court, do hereby certify the foregoing to be a transcript of the records of the district court, in the cause named at the beginning thereof, made up pursuant to rule 54 of the rules of the Supreme Court of the United States.

In testimony whereof I have hereunto signed my name and affixed the seal of the said district court, the 26th day of July, A. D. 1866.

[L. S.] GEO. GORHAM, *Clerk.*

95 UNITED STATES OF AMERICA,
Northern District of New York, ss:

I, Aug's A. Boyce, clerk of the circuit court of the United States in and for said district, do hereby certify the foregoing to be a true and correct copy of an original transcript on appeal from district court for said district.

In testimony whereof I have hereunto signed my name and affixed the seal of the said circuit court, at Utica, this twentieth day of August, A. D. 1866.

[L. S.] AUG'S A. BOYCE, *Clerk.*

[5-cent int. rev. stamp, cancelled]

96 Circuit court of the United States, N. district of New York, in admiralty.

BUFFALO, *Oct.* 10, 1866.

Mr. Haddock for resp't; Mr. S. S. Rogers for cl'm't.

WHITE'S BANK OF BUFFALO, petitioner and respondent,
vs.
THE PROCEEDS OF THE SCHOONER ROBERT Emmett, Robert Smith, claimant and appellant.

N. DISTRICT OF NEW YORK, *Erie County, ss:*

Gabriel Hoyt, being duly sworn and examined, testifies as follows:

Question. Did you and Henry Zahn execute a chattel mortgage upon the schooner Robert Emmett to W. G. Grant and W. G. Grant, jr., to secure the payment of $12,000?

Ans. We did on or about March 28, 1865.

Question. Was that mortgage executed by you in good faith, and without any intent to defraud your creditors or the creditors of Hoyt & Zahn, or either of them, or subsequent purchasers in good faith?

Ans. It was.

Question. Was it so executed by Henry Zahn, to the best of your knowledge?

97 Answer. It was.

Question. Why did not possession of the vessel accompany the mortgage?

Answer. The vessel was left in our possession to enable us to forward by her lumber on which the Messrs. Grant had made advances to Hoyt & Zahn, and to enable us to carry on our lumber business. The possession was retained without any intent to defraud any one.

X-'d by Mr. Rogers:

Question. When you executed the mortgage to the Messrs. Grant, what did you tell the Messrs. Grant about the previous mortgage to White's Bank of Buffalo?

Answer. I told them it had not been paid to my knowledge; that the whole amount of it was due, and that I didn't know whether the bank had refiled the mortgage.

Question. Has not the mortgage to the Messrs. Grant been fully paid? If yea, state when and how. If nay, state how much remains unpaid thereon.

Answer. It has not been paid. Mr. Grant informs me that he has not received sufficient property to pay his indebtedness. I
98 do not know it of my own knowledge, but Grant informs me that the indebtedness to secure a part of which the mortgages on the Emmett and Blossom were given has not been fully paid, within $3,000 and $4,000.

Question. How much was the entire indebtedness?

Answer. When the mortgage was given the books showed some $16,000 or $17,000 as the amount owed; but afterwards, when the account came to be written up, it proved that we owed them only about $12,000.

Question. How much have you paid them since that time?

Answer. I cannot say.

Question. Why was not some mention made in the mortgage to Grant of the character of the debt which it was given to secure?

Answer. I do not know.

99 Question. Was the mortgage on the Blossom given to secure the same debt to secure which the mortgage on the Emmett was given?

Answer. It was. It was also for $12,000.

Question. How much did Grant get out of the Blossom?

Answer. Grant told me something over $3,000, after paying expenses of sale. I think he bid her in at the sale in the admiralty.

Re-ex'd:

Question. After you and Zahn had executed the mortgage to Grant & Son, did you sell out your interest in Hoyt & Zahn's property to Mr. Zahn?

Answer. I did on the 8th of April, 1865. Zahn agreed to take the property and pay the debts.

G. HOYT.

Sworn and subscribed before me, October 10th, 1866.

DENNIS BOWEN,
U. S. Commissioner.

100 It is stipulated that the foregoing testimony in foregoing entitled action may be read by either party subject to objections as to pertinency and competency only, dated Oct. 10, 1866.

It is also stipulated for all the purposes of the appeal in this case that Zahn was in possession of the Emmett, her tackle, &c., when he executed the mortgage to the appellants; also that the amount of remnants of said vessel in the registry on the day of trial in the district court was about $4,436 68.

Dated Oct. 10, 1866.

BOWEN & ROGERS,
Att'ys for App'ts.
L. K. HADDOCK,
Appellee's Att'y.

101 Circuit court of the United States, northern district of New York.

THE PROCEEDS OF THE SCHOONER ROBERT EMMETT,
Robert Smith, claimant and appellant,
vs.
WHITE'S BANK OF BUFFALO, petitioner and appellee.

The answer of the above respondent to the petition of appeal of the appellant.

This respondent not confessing or acknowledging all or any of the matters or things to be true, as in and by the said petition of appeal are contained and set forth for answer thereunto, says, that he believes it to be true that such decree as is complained of by the appellant was made by the district court of the United States for the northern district of New York, as in the said petition of appeal is set forth; but as to the date, substance, and contents thereof, this respondent humbly craves leave to refer thereto when the same shall be produced.

And this respondent is advised and believes that the said decree is agreeable to justice and equity, and he therefore prays that the same may be affirmed, and that the said petition of appeal may be dismissed by this honorable court, with costs to be adjudged to this re-
102 spondent.

Dated July 28, 1866.

G. C. WHITE,
Pres't of White's Bank of Buffalo.

L. K HADDOCK, *Proctor.*
——— ———, *Advocate.*

Filed Sept'r 26th, 1866.

103 At a special term of the circuit court of the United States in and for the northern district of New York, held at the city hall in the city of Albany, on the 13th day of October, 1866.

Present, the Honorable Samuel Nelson, justice.

WHITE'S BANK OF BUFFALO, petitioner and appellee,
vs.
THE PROCEEDS OF THE SCHOONER ROBERT EMMETT,
Robert Smith, claimant and appellant.
} In admiralty.

The appeal from the decree of the district court in this cause came on to be heard on this day, and having been argued by counsel for the respective parties, Mr. Sherman S. Rogers appearing for the claimant and appellant, and Mr. L. K. Haddock appearing for the petitioner and appellee, and due deliberation having been thereupon had, it is ordered, adjudged, and decreed that the mortgage to Robert Smith, the said claimant and appellant, which is men-
104 tioned and referred to in the answer of said claimant in this cause, was a lien upon said schooner Robert Emmett, her tackle, apparel, and furniture, superior and prior to the mortgage to said petitioner, and the mortgage to W. G. Grant and W. G. Grant, junior, which are mentioned and referred to in the petition of the said White's Bank of Buffalo, said cause, and that said claimant and appellant ought first to be paid out of the said proceeds the amounts unpaid upon the moneys secured by his said mortgage, to wit, the sum of six thousand six hundred and fifty-five dollars and sixty-one cents, or so much thereof as the same will pay.

And it is further ordered, adjudged, and decreed that the decree of the said district court of the United States for the northern district of New York, so as aforesaid appealed from, be, and the same is hereby, in all things reversed and held for nought, and that the petition of said White's Bank of Buffalo be, and the same is hereby, dismissed with costs to the appellant.

And it is further adjudged that the said appellant recover of the said appellee one hundred and thirty-five 40-100 dollars, his costs and disbursements of this cause, and that he have execution therefor.

105 Filed Nov. 16, 1866.

Costs of claimant and appellant.

106 U. S. circuit court N. dist. of New York.

WHITE'S BANK OF BUFFALO, petitioner and appellee,
vs.
THE PROCEEDS OF THE SCHOONER ROBERT EMMETT,
Robert Smith, claimant and appellant.

In district court.

Docket fee	$20 00
Deposition Henry Zahn	2 50
Deposition of Mr. Huss	2 50
Oath to answer	25
Witness fees, Huss and Zahn	3 00

Clerk's fees.

G. Gorham for transmiss. to circuit court	24 15

In circuit court.

Docket fee		$20 00
107	U. S. circuit clerk's fees.	
July 27.	Filing transmiss. and ent. appeal 50c.; dock'g case on appeal $1 00	1 50
	Clerk circuit court for two copies apostles	32 00
Nov. 7.	Fil'g and cert'd copy opinion	1 00
16.	Fil'g ent., and cert. copy decree	1 50
	Making enrolled decree &c., with transmiss. 160 f. at 15 c	24 00
	Final fees tax'g, dock'g, &c., &c	3 00
		135 40

Nov. 16; 1866. Taxed at one hundred and thirty-five 40-100 dollars.

A. A. BOYCE, *Clerk.*

108 CIRCUIT COURT OF UNITED STATES,
Northern District of New York, ss:

Be it remembered, that the transmiss. of pleadings and proceedings herein, from the district court, was sent here on appeal, and filed on the 27th day of July, 1866.

The appeal was duly argued by the advocates of the respective parties before his honor Samuel Nelson, circuit judge, at the city hall, in Albany, on the 13th day of October, 1866, and a decretal order made and pronounced herein, of the same date, a copy of which is above annexed, by which it will appear that the said decree of the district court, herein appealed from, now stands reversed with costs.

Wherefore the said pleadings and proceedings and proofs and costs, as taxed, are now here, all attached together and annexed hereto, and the final decree herein is now duly enrolled, signed, and docketed for the sum of one hundred and thirty-five dollars and forty cents, on this 19th November, 1866, in favor of Robert Smith, claimant, of the proceeds of the schooner Robert Emmett and ap-
109 pellant, and against White's Bank, of Buffalo, petitioner and appellee.

And execution is prayed therefor.

AUG'S A. BOYCE, *Clerk.*

To the Supreme Court of the United States:

The return to the preceding appeal will appear by the transcript thereto annexed.

AUGUSTUS A. BOYCE,
Clerk U. S. C. C., N. D., N. Y.